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September 18, 2013

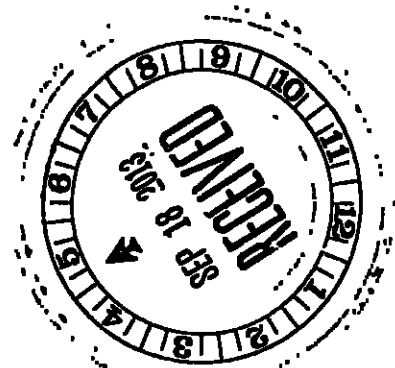
JOHN D. HEFFNER

Direct Phone 202-742-8807
Direct Fax 202-742-8897
john.heffner@strasburger.com

VIA COURIER

Ms. Cynthia T. Brown
Chief of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

RECEIVED
SEP 18 2013
SURFACE
TRANSPORTATION BOARD



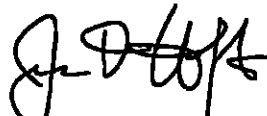
RE: FD 35768, Rogue Valley Terminal Railroad Corporation - Corporate Family Transaction Exemption

Dear Ms. Brown:

I am enclosing for filing in the above-captioned proceeding an original and ten copies of a verified notice of exemption under 49 CFR §1180.2(d)(3) by Rogue Valley Terminal Railroad Corporation along with a filing fee check for \$1400 and a copy of the filing on a computer disk in word format.

Please date stamp and return to our messenger one copy of this filing.

Sincerely yours,


John D. Heffner

FILED
SEP 18 REC'D
SURFACE
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ENTERED
Office of Proceedings
SEP 18 2013
Part of
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Enclosure

5248942 1/SP/30084/0101/091813

Strasburger & Price, LLP

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35768

**ROGUE VALLEY TERMINAL RAILROAD CORPORATION
- CORPORATE FAMILY TRANSACTION EXEMPTION -
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (3)**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: September 18, 2013

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35768

**ROGUE VALLEY TERMINAL RAILROAD CORPORATION
- CORPORATE FAMILY TRANSACTION EXEMPTION -
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (3)**

Comes now Rogue Valley Terminal Railroad Corporation ("Rogue Valley" or "the Petitioner"), an existing Class III short line railroad subject to the jurisdiction of the Board, and states as follows:

1. Pursuant to the provisions of Section 1180 of the Board's Railroad Consolidation Rules, 49 C.F.R. §1180, Petitioner hereby gives notice of a transaction which qualifies for exemption under §1180.2(d) (3) of those rules.

2. As relevant here, Rogue Valley is a Class III short line railroad established for the purpose of owning and operating as a common carrier a line of railroad. Rogue Valley was formerly known as WCTU Railway LLC, or White City Terminal & Utility Co. (hereafter "WCTU") and was indirectly controlled by

Berkshire Hathaway, Inc. ("Berkshire")¹

3 Rogue Valley and its predecessor companies own and operate 14 miles of railroad ("the Line") serving the Medford Industrial Park and connecting with the Central Oregon and Pacific Railroad, Inc., entirely within the city limits of White City, OR. Petitioner attaches as Exhibit A a series of maps showing the Line of railroad and railroad connections.

4. CCT and Rogue Valley propose to establish a new corporate affiliate to be called Medford Industrial Trainline Management LLC ("Medford"). Rogue Valley will convey to Medford the track and the underlying right of way it presently owns while retaining an operating easement and the common carrier operations for itself. Rogue Valley will own the majority interest (the exact amount as yet to be determined) in Medford with the minority interest to be owned

¹ Although not relevant to this transaction, WCTU was one of two short line railroads owned by an entity named Marmon Transportation Services, LLC ("Marmon"), which was in turn owned by Berkshire. When Berkshire acquired 100% control of BNSF Railway in 2010, it inadvertently neglected to seek common control approval for these transactions. As a result, Berkshire and Marmon agreed to divest themselves of these short line carriers with WCTU being sold on December 17, 2012, to RVTR Rail Holdings, LLC ("RVTR"), a noncarrier entity established and controlled by Scott DeVries, an individual. The details of this transaction are described in a Board decision issued on October 9, 2012, and docketed as *Western Coal Traffic League-Petition for Declaratory Order*, FD 35506. Subsequently, Mr. DeVries renamed RVTR "CCT Rail System Corporation" ("CCT") and renamed WCTU "Rogue Valley". While CCT and Rogue Valley advised the Board of these changes by a letter filed March 18, 2013 in that same docket, no Board authorization appears required as there is no regulatory approval or exemption needed for changes in name and corporate form (from an LLC to a corporation) absent a change in the state of incorporation. 49 CFR §1180.2(d) (6)

by the Modoc Rail Academy ("Modoc"), a noncarrier that owns and operates the nation's first and only independent full service railroad training and education school.

5. Under §1180.2(d) (3) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, §1180.2(d) (3) exempts corporate family transactions where the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

6 The subject transaction fits the statutory test. There will be no changes in service levels, operations, or the competitive balance after consummation. The only difference is that ownership of the track and right of way will be in the hands of a new entity, Medford, which will be a corporate affiliate of Rogue Valley, while Rogue Valley will continue to provide common carrier railroad service over the Line.

7. The Board has on a number of occasions exempted transactions such as this one involving the splitting of a rail carrier into two or more entities and the transfer of its lines or operating rights to those affiliated entities. *See, Kansas City*

Southern, The Kansas City Southern Railway Company, and Meridian Speedway LLC—Exemption for Transactions Within a Corporate Family, FD 34822, STB served Feb. 16, 2006 (exempting the transfer of rail line by a carrier to newly created corporate affiliate along with continuance in control of the affiliated companies and the subsequent granting back of operating rights by the new carrier to the grantor to fulfill the grantee's common carrier obligations). In *Housatonic Railroad Company, Inc., Maybrook Railroad Company, and Housatonic Transportation Company—Intra-Corporate Family Transaction Exemption*, FD 35723, STB served March 22, 2013, the Board exempted a corporate family transaction whereby Housatonic Railroad transferred to its corporate affiliate, Maybrook Railroad Company, the ownership of its rail line with Housatonic to continue to be the carrier providing operations over that line. And most recently, the Board exempted a transaction involving the splitting of one short line railroad into two entities with the original company continuing to own and operate one line and the newly created entity taking title to and operating the other line. *Hainesport Industrial Railroad, LLC—Corporate Family Transaction Exemption*, FD 35760, STB served Sept. 11, 2013. Accordingly, ample Board precedent exists to authorize the proposed transaction.

8. In order to claim the §1180.2(d) (3) exemption, §1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in §§1180.6(a) (1) (i) – (iii), 1180.6(a) (5) – (6), and 1180.6(a) (7) (ii) of those rules. That information is provided as follows:

Summary of Proposed Transaction: 49 CFR §1180.6(a) (1) (i)

As described above, Rogue Valley will transfer ownership of the track and right of way comprising the Line to a new affiliate, Medford, while retaining an operating easement and the common carrier obligation for itself.

Petitioners' name, address, and telephone number:

CCT Rail System Corporation
Rogue Valley Terminal Railroad Corporation
Medford Industrial Trainline Management LLC
3018 North 21st Street
Superior WI 54880-4604
509-724-0101

Legal counsel to whom questions should be addressed:

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Schedule for consummation: 49 CFR §1180.6(a) (1) (ii)

The parties intend to consummate the proposed transaction at least 30 days from the date of this notice, on or about October 19, 2013.

Purpose to be accomplished by the transaction: 49 CFR §1180.6(a) (1) (iii)

The purpose of this transaction is to allow Rogue Valley to transfer ownership of its track and right of way to a corporate affiliate [Medford] while retaining an operating easement and the common carrier obligation for itself. Medford will use the Line to train new railroad train and engineer personnel and will not interfere with Rogue Valley's ability to meet its common carrier obligations to customers.

State(s) in which the property of each carrier is situated: 49 CFR §1180.6(a) (5)

Oregon

Map: 49 CFR §1180.6(a) (6)

Attached hereto as Exhibit A.

Copy of Agreement: 49 CFR §1180.6(a) (7) (ii)

Petitioner has not submitted a copy of the operating agreement that will govern the relationship between the parties because Medford will have a residual common carrier obligation as the Line's owner. *Jackson County Port Authority-Construction Exemption-Pascagoula, MS*, FD 31536, ICC served Aug. 21, 1990.

Nevertheless, it would be willing to furnish the Board a copy of that agreement, once prepared, should that be requested.²

Environmental and historical considerations:

This corporate family transaction exemption proceeding is exempt from environmental review under 49 CFR §1105.6(c) (2) (i) because the proposed action will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5). In addition, this proceeding is exempt from historic review under 49 CFR §1105.8(b)(1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are at least 50 years old.

Accordingly, no historic report is required.

Labor Protection to be Imposed

No labor protection applies on transactions involving only class III railroads.

See, 49 U.S.C. §11326(c).

² The Board has ruled that it will require the submission of the operating agreement between a carrier and a noncarrier track owner so it can determine that there is no opportunity for the track owner to interfere with the tenant carrier's ability to provide common carrier rail service. *See Anthony Macrie—Continuance in Control Exemption—N J Seashore Lines, Inc.*, FD 35296, slip op. at 3-4 (STB served Aug 31, 2010). Here Medford will have a residual common carrier obligation unlike Clayton Sand, the track owner in *Macrie*, so there would appear to be no need to furnish that agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John D. Heffner', with a long horizontal flourish extending to the right.

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

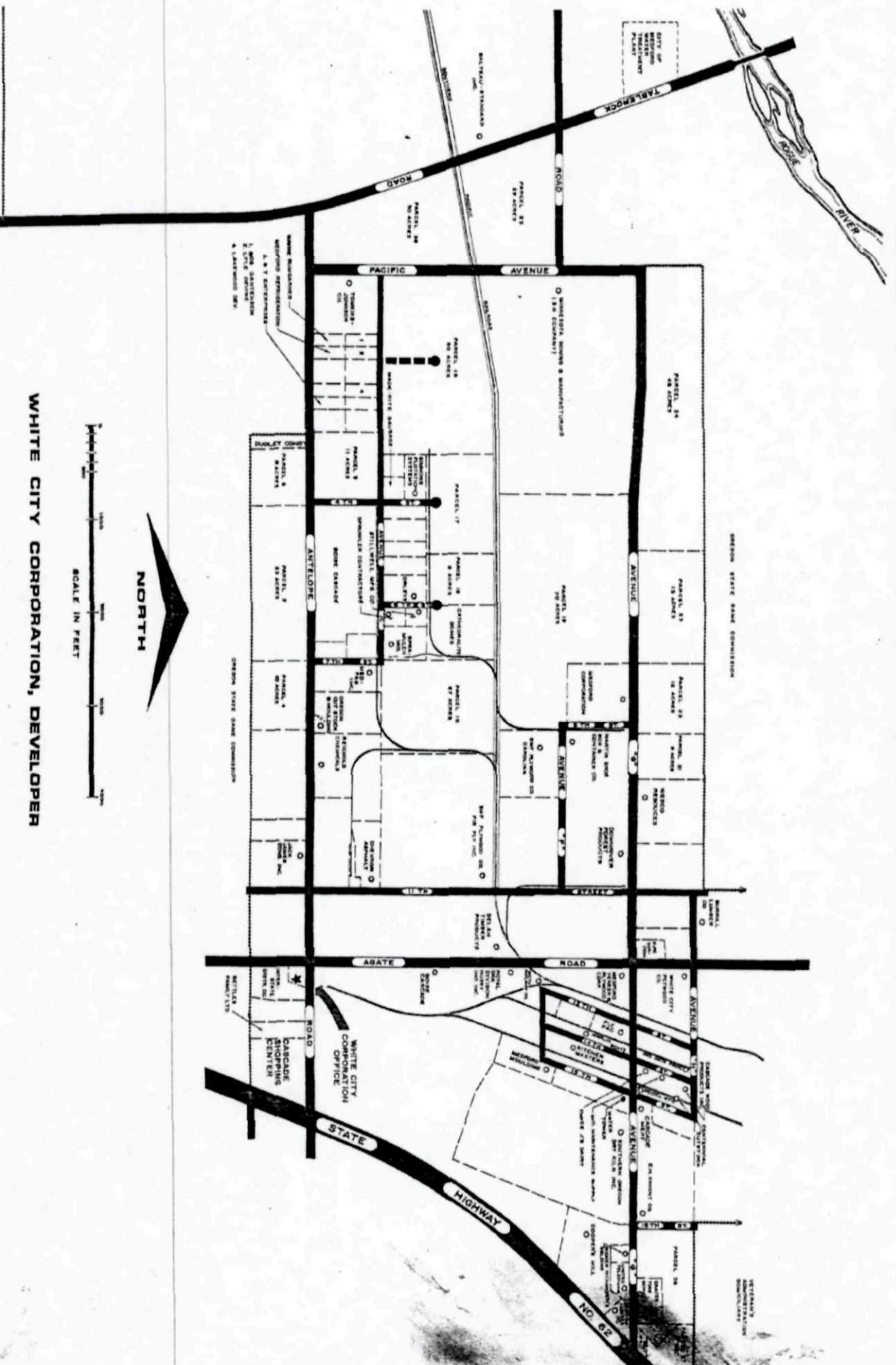
Counsel for Petitioner

Dated: September 18, 2013

EXHIBIT A



MEDFORD INDUSTRIAL PARK



G AVE

PACIFIC AVE

CORP White City Yard

8th ST

5th ST

7304

7317 B

F AVE

7333

7317 A
← 6540

7349

7337

Red Blanket

7367

7335

TO
WHITE
CITY

TO TOLO

7350

7365

7366

MP 456

7332

MP 455

7360 A

7360 B

7360 C

INDUSTIAL CIRCLE

C AVE

7323

7325

6th ST

7341

7th ST

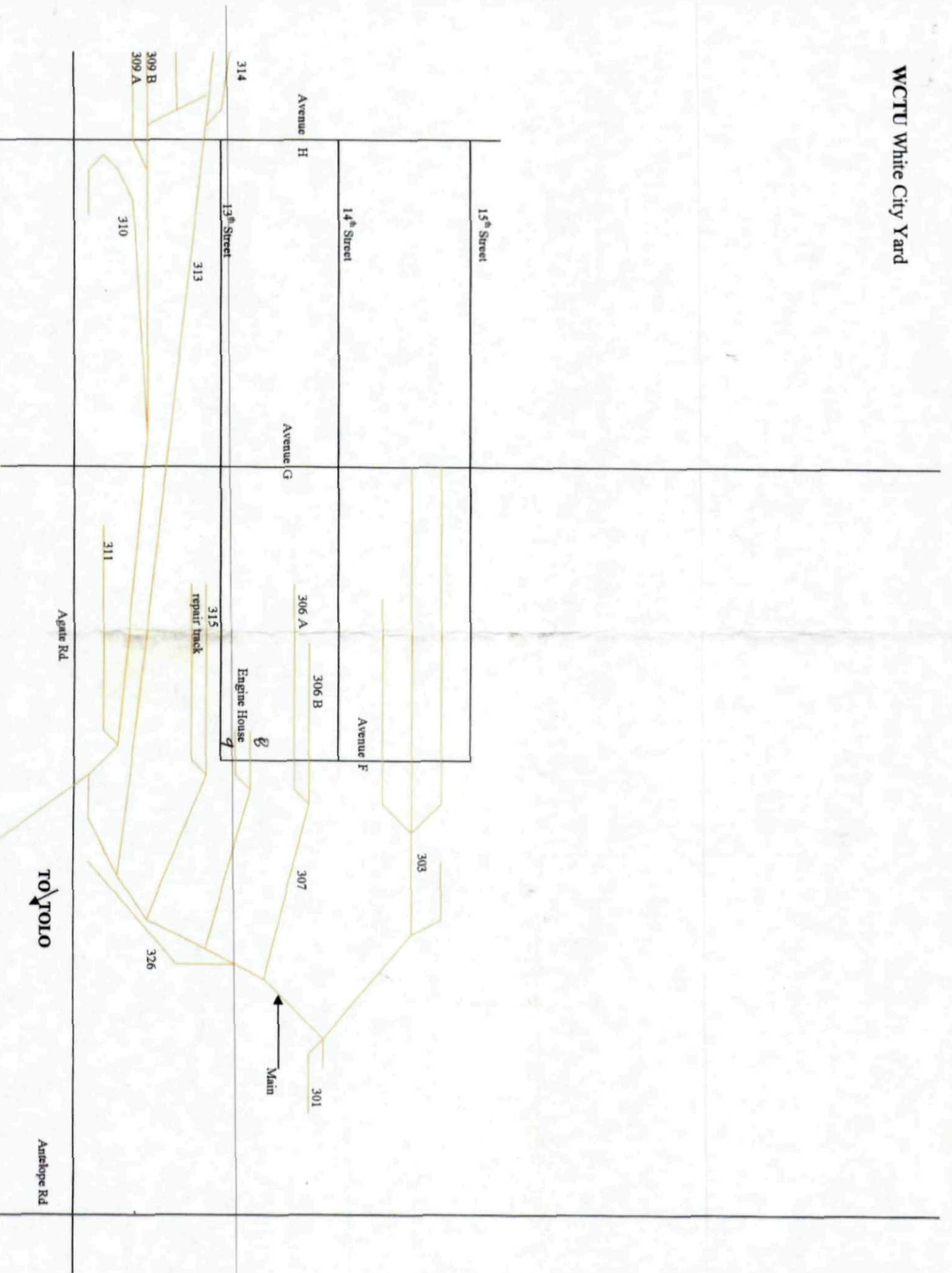
7338

7339

7340

ANTELOPE RD

WCTU White City Yard



VERIFICATION

STATE OF MINNESTOTA

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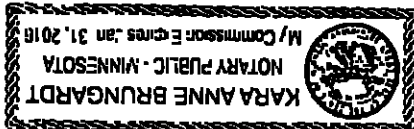
CITY OF DULUTH

)

Scott B. DeVries, being duly sworn according to law, hereby deposes and states that he holds the position of President with applicant/petitioner, is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information, and belief

Scott B. DeVries

Subscribed to and sworn to before me, a Notary Public, in and for the County of Saint Louis in the State of Minnesota, this 12 day of September 2013.



Kara Brungardt
Notary Public

My Commission expires: Jan 31, 2016